

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

FRANKLIN CONSTRUCTION GROUP, LLC,)

Plaintiff,)

v.)

WILLIAM SHORE, JWSC, LLC, KEITH)

MEADOWS, JOSEPH HEATH, HYDS INC.,)

DEAN BINGHAM, LUNDON JOHNSON,)

TYLER WEBER, JOEL CHEVRETTE,)

DANNY KNOWLES, SCOTT MATTHEWS,)

and LOWE’S HOME CENTERS, INC.,)

Defendants)

CASE NO. 3:24-cv-01255

District Judge Crenshaw

Magistrate Judge Frensley

**DEFENDANT KEITH MEADOWS AND HYDS INC.’S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM AND LACK OF SUBJECT MATTER JURISDICTION**

Defendants Keith Meadows and HYDS, Inc. hereby move this Court to dismiss Count I of Plaintiff Franklin Construction Group (FCG)’s complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), and to dismiss the remainder of FCG’s claims for lack of subject matter jurisdiction.

FCG’s Complaint makes conclusory claims of a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) to bind together its otherwise unrelated claims against HYDS, Inc., Keith Meadows, and Joseph Heath (the “HYDS Defendants”) on the one hand and Lowe’s Home Centers, Inc. and six of its employees (the “Lowe’s Defendants”) on the other. Even under the most liberal construction, FCG’s allegations fail to establish that these two distinct groups operated as an “enterprise” or perpetrated a continuing pattern of racketeering activity—both required elements under RICO. For these reasons, FCG’s RICO claim—set forth as Count I to the complaint—must be dismissed for failure to state a claim.

The remaining 13 counts are all state law claims, which do not give rise to any federal jurisdiction for this case. Plaintiff and defendants are not fully diverse, so there can be no diversity jurisdiction for these claims either. The federal supplemental jurisdiction statute, 28 U.S.C. § 1367(c)(3), grants judges discretion to exercise jurisdiction even after the court “has dismissed all claims over which it has original jurisdiction.” However, within this Circuit, when all federal claims are all dismissed early in the litigation, there is a strong presumption in favor of dismissing supplemental state law claims. There is no reason to depart from that presumption here, so once the Court dismisses FCG’s RICO claim under 12(b)(6), it should dismiss all remaining state law claims for want of jurisdiction under Rule 12(b)(1).

If, in the alternative, this Court chooses to retain supplemental jurisdiction in this case, then the Court should dismiss all remaining claims asserted against Defendant Meadows and Defendant HYDS, Inc. for failure to state a claim and failure to plead with the particularity required by Fed. R. Civ. P. 9(b) for those claims sounding in fraud. FCG asserts four state law claims against Defendant Meadows and Defendant HYDS in the Complaint: common law fraud, civil conspiracy, violation of the Tennessee Consumer Protection Act, and conversion. As set forth in Defendants’ contemporaneously filed Memorandum of Law, FCG makes only conclusory allegations insufficient to support the causes of action it has actually pled. The fraud, conspiracy, and TCPA claims all require FCG to state with particularity the circumstances constituting fraud or mistake. It has failed to do so. The TCPA claim is also untimely pursuant to the applicable one-year statute of limitations. And the conversion claim fails because a claim for conversion only applies to tangible property. FCG, in contrast, seeks to recover for alleged overpayments from business transactions, and overpayments in such circumstances constitute intangible property not subject to such a conversion claim.

For all of these reasons, and as set forth in Defendants' supporting memorandum of law, this Court should dismiss FCG's RICO claims with prejudice, and then (1) dismiss all remaining claims, and by extension, the matter as a whole, for want of subject-matter jurisdiction, or (2) dismiss all state claims against Defendants Health and HYDS, Inc. for failure to state a claim.

Date: January 17, 2025

Respectfully submitted,

/s/ Jerry E. Martin

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, the foregoing *Defendant Keith Meadows and HYDS Inc.'s Motion to Dismiss For Failure to State a Claim and Lack of Subject Matter Jurisdiction* was served through the Court's CM/ECF system, which will provide notice to the following counsel of record in this case.

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